IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6965 OF 2005

Sachin Dattatray Pawar,)
Age 28 years, Occ : Student,)
Residing at Poonam Vihar A-8 CHS)
Ltd., Shanti Vihar, Flat No.23, Near)
Mira Road Station (E),)
Dist. Thane.)...Petitioner

V/s.

1. The Vice Chancellor,)
   University of Mumbai)
   University Examination Section,)
   M.J. Phule Bhavan, Vidyanagari)
   Campus, Mumbai – 400 098.)

2. The Controller of Examination)
   University Examination Section,)
   M.J. Phule Bhavan, Vidyanagari)
   Campus, Santacruz (East),)
   Mumbai – 400 098.)

3. University of Mumbai)
   University Examination Section,)
   M.J. Phule Bhavan, Vidyanagari)

Campus, Santacruz (East),)
Mumbai – 400 098.)

4. The Principal Bombay Educational)
Trust Institute of Pharmacy,)
General Arunkumar Vaidya)
Chowk, Bandra Reclamation,)
Bandra (W), Mumbai – 400 050.)

5. The Board of Technical)
Examinations Maharashtra State)
Council of India)
(Approved by the Pharmacy)
Council of India, Mumbai))

6. The State of Maharashtra)
Mantralaya through Education)
Department, Mantralaya,)
Mumbai – 400 032.)...Respondents

Shri U.G. Kerkar with Shri V.A. Jadhav for the Petitioner.
Shri S. Mahadeshwar for Respondent Nos.1, 2 and 3.
Shri P.M. Patil, Assistant Government Pleader, for Respondent No.6.

CORAM : H.S. BEDI, C.J., &
V.M. KANADE, J.

DATED : DECEMBER 19, 2006.

JUDGMENT (PER H.S. BEDI, C.J.) :-

1. The petitioner after having passed 12th Standard examination, secured admission in the B.Pharm. Science Course in the year 1997. He passed the First Year B.Pharm. Examination in 1997, the second in the year 1998 and the third in the year 2000. He thereafter appeared for the fourth year B.Pharm. Science Examination which was held in the months of May and November 2001, respectively and was declared failed. He yet again appeared for the aforesaid examination in May and December, 2003 and was again declared as fail. He thereafter sought another chance for the fourth year of B.Pharm. Science examination to be held in the month of May 2004. This permission was declined by the order dated 29th March, 2004, Exhibit-H to the petition on the ground that he had failed to clear the examination in the fourth and last attempt as per Regulation 0.3589 relating to the B.Pharm. Science Course. Exhibit-H was impugned by the petitioner by Civil Writ Petition No.2069 of 2004 and by an interim order dated 5th

May, 2004, the petitioner was permitted to appear for the examination but the University was directed to withhold his result subject to further orders. The petitioner was also permitted to file a representation Exhibit-B to this petition and by order dated 14th October, 2004, on the submission of the University that the representation would be decided within three weeks, the petition was disposed of with the observation that no further directions were necessary. The representation filed by the petitioner was rejected by the Exhibit-D dated 4th November, 2004 on the ground that the ordinance did not permit him to appear for the examination. Exhibit-D has been impugned in the present petition.

2. The matter came up before the another Division Bench of this Court and in its order dated 27th February, 2006, it was observed as under :-

> **"The learned Counsel for the Petitioner points out that Ordinance No.3589 was relaxed by the University Circular of 23rd June 2005. By that circular, the students**

who had not cleared the B. Pharm Sciences degree course as per the syllabus of the University of Mumbai and the Maharashtra University of Health Sciences with prevailing maximum number of attempts of examinations, have been allowed two additional attempts to appear for the B. Pharm. Sciences degree examination, as a very special case and that these two attempts of examinations were to be held in the second half of 2005 and in the first half of 2006. It appears that there was, consideration of the issue by the Board of Studies in Pharmaceutical Sciences which gave a recommendation on 25th May 2005 where thereafter has been approved by the University.

. In the instance case, the Petitioner appeared for the examination held in May 2004, that is before the exemption was given. The Petitioner could have appeared in the second half of 2005 and in the first half of 2006. We asked the Learned Counsel for the Respondent-University as to whether exemption was given in view of any specific consideration.

The Learned Counsel points out that there has been no such consideration. If that be the case, we see no reason as to why the benefit ought not to be given to a candidate like the Petitioner who was allowed to appear for the examination by order dated 5th May 2004. The Learned Counsel for the University to take instructions.

. S.O. For two weeks."

3. Today, the learned Counsel for the University has put on record yet another letter dated 3rd February, 2006 that the relaxation given by the office circular dated 23rd June, 2005 in respect of the two additional chances for B.Pharm. Science Degree Examination were only for those candidates who had failed in the examination either in 2005 or thereafter and could not be made applicable to a candidate who had failed in 2004 or before that date. We find the stand of the respondent wholly acceptable in the light of what follows. It appears that one Shri Deepak Rathod and 11 other students had claimed the relief claimed by the petitioner in Writ

Petition No.2069 of 2004. This petition was dismissed by the High Court but notwithstanding the dismissal of the writ petition, the Vice Chancellor accepted the request of these candidates and regularised their appearance in the fourth year B.Pharm. Examination for the additional attempt held in 2004. We also find these facts made out from Exhibit-D dated 4th November, 2004 which has been filed in the present writ petition. We are, therefore, unable to comprehend as to why the petitioner could not have been given the same relief by the University itself as in the case of Shri Deepak Rathod and others even though their writ petition had earlier been rejected.

4. In these circumstances, we are of the opinion that the writ petition must succeed. We, accordingly, quash Exhibit-D dated 4th November, 2004 and direct the University to declare the result of the petitioner forthwith.

5. Rule is made absolute in terms of prayer clauses (b) and (c).

CHIEF JUSTICE

V.M. KANADE, J.